

COMMENTS

The enclosed is responsive to the Examiner's Office Action mailed on November 20, 2002. At the time the Examiner mailed the Office Action claims 1 through 5, 7, 9 through 14, 16 and 18 through 49 were pending. By way of the present response the Applicant has: 1) amended claims 5, 11, 18, 23, 28, 33, 38, and 44 through 49; and, 2) has added new claims 50 through 59. As such, claims 1 through 5, 7, 9 through 14, 16 and 18 through 59 are presently pending. No new matter has been added. The Applicant respectfully requests reconsideration of the present application and the allowance of claims 1 through 5, 7, 9 through 14, 16 and 18 through 59.

Claims 5, 12, 18, 23, 28, 33, 38 and 44 stand rejected under 35 USC 112 ¶2 as failing to particularly point out and distinctly claim their corresponding subject matter. In response, the Applicant has: 1) amended claim 5 to recite "*the* hitless rebuild" so that proper antecedent basis is maintained; 2) amended claim 18 at line 3 to recite "said *networking device* card" so that proper antecedent basis is maintained; 3) amended claim 23 at line 3 to recite "said *networking device* card" so that proper antecedent basis is maintained; 4) amended claim 28 at line 2 to recite "said *networking device* card" so that proper antecedent basis is maintained; 5) amended claim 33 at line 2 to recite "said *networking device* card" so that proper antecedent basis is maintained; 6) amended claim 38 at line 3 to recite "said *networking device* card" so that proper antecedent basis is maintained; and, 7) amended claim 44 at line 3 to recite "said *networking device* card" so that proper antecedent basis is maintained. The Applicant has not amended claim 12 because the Examiner's basis for rejection (i.e., the term "a

hitless rebuild”) is inconsistent with the wording of the claim (i.e., the term “a hitless rebuild” does not appear in claim 12).

The Applicant has also amended claims 28 and 33 beyond any claim amendments described just above for clarification purposes; and, has amended claims 11 and 44 through 49 for clarification purposes. No new matter has been entered.

Independent claims 1, 9 and 10 stand rejected under 35 USC 103 as being obvious in light of the combination of U.S. Patent No. 6,324,644 (hereinafter, “Rakavy”) and U.S. Patent No. 6,327,675 (hereinafter, “Burdett”). “To establish a *prima facie* case of obviousness ... the prior art reference (or references when combined) must teach or suggest all the claim limitations.”

MPEP 2143

The Applicant respectfully submits that the combination of Rakavy and Burdett fails to teach or suggest

“determining whether a threshold has been reached *if the error is determined to be ignorable*, the threshold corresponding to a number of hitless rebuilds that have occurred within an amount of time” See, Applicants claims 1, 9 and 10.

The Examiner has reasoned that Col. 5, lines 36-47 of Burdett “teaches the step of determining whether threshold has been reached, the threshold corresponding to a number of hitless rebuilds that have occurred within an amount of time”.

See, Examiner’s Office Action, pg. 5.

The Applicant respectfully submits that the Examiner’s reasoning is flawed at least because the Examiner has failed to find any prior art that covers the claim element “if the error is determined to be ignorable”. Better said, by the

Examiner's own line reasoning (and without being construed as an admission of as much by the Applicant), Burdett only teaches "determining whether a threshold has been reached" and does not teach "determining whether a threshold has been reached *if an error is determined to be ignorable*." The burden is placed on the Examiner to find prior art that covers each and every element of the Applicant's claims. By the Examiner's own reasoning, the Examiner has failed to meet this burden.

Moreover, from the Applicant's perspective, the teachings of Burdett at Col. 5 lines 36-47 simply do not make any reference to the determination of a threshold based upon a condition precedent. As such it is impossible for Burdett to teach or suggest "determining whether a threshold has been reached *if an error is determined to be ignorable*." Therefore, independent claims 1, 9 and 10 are patentable over the combination of Rakavy and Burdett.

Independent claims 18, 23, 28, 33, 38 and 44 stand rejected under 35 USC 102(e) in light of Rakavy. "To anticipate a claim, the reference must teach every element of the claim" MPEP 2131. The Examiner has reasoned that Col. 15, lines 3-39 of Rakavy disclose "[memory] information further comprising a routing table, the re-initializing not deleting the routing table and state table information from the memory." Examiner's Office Action, pg. 3. The Applicant respectfully submits that Rakavy fails to disclose, teach or suggest memory information comprising a routing table and/or a state table; and, as consequence, independent claims 18, 23, 28, 33, 38 and 44 are patentable over Rakavy.

Rakavy is devoted to communicating, over a network, with a computing system whose operating system is inoperable (e.g., because the operating system needs to be re-booted). According to Rakavy, in order to communicate over a network with a computing system whose operating system is inoperable, the most basic level of software that resides “beneath” the operating system (i.e., the Basic Input/Output System (BIOS)) needs to be retrofitted with instructions that prepares or otherwise enables the computing system to communicate over the network without the assistance of the computing system’s own operating system. A BIOS retrofitted with such instructions is referred to by Rakavy as a “network enhanced BIOS”. It is these instructions that Col. 15, lines 3-39 of Rakavy are devoted to describing.

The “table” referred to at Col. 15, line 6 of Ravaky is a table that lists “external routines which are required to support the operation” of a Netware Loadable Module (NLM) whose corresponding network device driver is needed (in binary image form) by the network enhanced BIOS. See, Rakavy Col. 14, line 58 through Col. 15, line 5. Here, Rakavy is teaching that a network enhanced BIOS may make reference to other regions of software specially tailored for performing networking communications. Other tables (besides the “external routine” table described just above) that are associated with a device driver needed by the network enhanced BIOS are described at Col. 15, lines 26 – 44.

When viewed from this perspective, it is clear to the Applicant that nothing through Col. 15, lines 3-39 of Rakavy could be reasonably construed as disclosing “[memory] information further comprising a routing table, the re-

initializing not deleting the routing table and state table information from the memory." Generally, the section of Rakavy cited by the Examiner is devoted to teaching the *use or loading of software* for a computing system whose operating system is not functional; while, the claim element of interest is devoted to *memory information that is preserved* during a software re-initialization process. As such it is impossible for the section of Rakavy cited by the Examiner to disclose the claimed subject matter at issue. Therefore independent claims 18, 23, 28, 33, 38 and 44 (as well as new independent claims 50 and 55) are allowable over Rakavy.

In light of the arguments presented above the Applicant respectfully submits that all pending claims are presently in allowable form. The applicant therefore respectfully requests the allowance of same.

If there are any additional charges, please charge them to our Deposit Account Number 02-2666. If a telephone conference would facilitate the prosecution of this application, the Examiner is invited to contact Robert B. O'Rourke at (408) 720-8300.

Respectfully submitted,

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